

597-02566-10

Proposed Committee Substitute by the Committee on Banking and  
Insurance

1                               A bill to be entitled  
2       An act relating to Medicaid and public assistance  
3       fraud; creating s. 624.35, F.S.; providing a short  
4       title; creating s. 624.351, F.S.; providing  
5       legislative intent; establishing the Medicaid and  
6       Public Assistance Fraud Strike Force within the  
7       Department of Financial Services to coordinate efforts  
8       to eliminate Medicaid and public assistance fraud;  
9       providing for membership; providing for meetings;  
10      specifying duties; requiring an annual report to the  
11      Legislature and Governor; creating s. 624.352, F.S.;  
12      directing the Chief Financial Officer to prepare model  
13      interagency agreements that address Medicaid and  
14      public assistance fraud; specifying which agencies can  
15      be a party to such agreements; amending s. 16.59,  
16      F.S.; conforming provisions to changes made by the  
17      act; requiring the Divisions of Insurance Fraud and  
18      Public Assistance Fraud in the Department of Financial  
19      Services to be collocated with the Medicaid Fraud  
20      Control Unit if possible; requiring positions  
21      dedicated to Medicaid managed care fraud to be  
22      collocated with the Division of Insurance Fraud;  
23      amending s. 20.121, F.S.; establishing the Division of  
24      Public Assistance Fraud within the Department of  
25      Financial Services; amending ss. 411.01, 414.33, and  
26      414.39, F.S.; conforming provisions to changes made by  
27      the act; transferring, renumbering, and amending s.

597-02566-10

943.401, F.S.; directing the Department of Financial Services rather than the Department of Law Enforcement to investigate public assistance fraud; directing the Auditor General, in consultation with the Office of Program Policy Analysis and Government Accountability to conduct an operational audit of the Medicaid fraud and abuse processes in the Agency for Health Care Administration; requiring a report to the Legislature and Governor by a certain date; establishing the Medicaid claims adjudication project in the Agency for Health Care Administration to decrease the incidence of inaccurate payments and to improve the efficiency of the Medicaid claims processing system; transferring activities relating to public assistance fraud from the Department of Law Enforcement to the Division of Public Assistance Fraud in the Department of Financial Services by a type two transfer; providing an effective date.

WHEREAS, Florida's Medicaid program is one of the largest in the country, serving approximately 2.7 million persons each month. The program provides health care benefits to families and individuals below certain income and resource levels. For the 2008-2009 fiscal year, the Legislature appropriated \$18.81 billion to operate the Medicaid program which is funded from general revenue, trust funds that include federal matching funds, and other state funds, and

WHEREAS, Medicaid fraud in Florida is epidemic, far-reaching, and costs the state and the Federal Government

597-02566-10

billions of dollars annually. Medicaid fraud not only drives up the cost of health care and reduces the availability of funds to support needed services, but undermines the long-term solvency of both health care providers and the state's Medicaid program, and

WHEREAS, the state's public assistance programs serve approximately 1.8 million Floridians each month by providing benefits for food, cash assistance for needy families, home health care for disabled adults, and grants to individuals and communities affected by natural disasters. For the 2008-2009 fiscal year, the Legislature appropriated \$626 million to operate public assistance programs, and

WHEREAS, public assistance fraud costs taxpayers millions of dollars annually, which significantly and negatively impacts the various assistance programs by taking dollars that could be used to provide services for those people who have a legitimate need for assistance, and

WHEREAS, both Medicaid and public assistance programs are vulnerable to fraudulent practices that can take many forms. For Medicaid, these practices range from providers who bill for services never rendered and who pay kickbacks to other providers for client referrals, to fraud occurring at the corporate level of a managed care organization. Fraudulent practices involving public assistance involve persons not disclosing material facts when obtaining assistance or not disclosing changes in circumstances while on public assistance, and

WHEREAS, ridding the system of perpetrators who prey on the state's Medicaid and public assistance programs helps reduce the state's skyrocketing costs, makes more funds available for

597-02566-10

essential services, and improves the quality of care and the health status of our residents, and

WHEREAS, aggressive and comprehensive measures are needed at the state level to investigate and prosecute Medicaid and public assistance fraud and to recover dollars stolen from these programs, and

WHEREAS, new statewide initiatives and coordinated efforts are necessary to focus resources in order to aid law enforcement and investigative agencies in detecting and deterring this type of fraudulent activity, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 624.35, Florida Statutes, is created to read:

624.35 Short title.—Sections 624.35-624.352 may be cited as the "Medicaid and Public assistance Fraud Strike Force Act."

Section 2. Section 624.351, Florida Statutes, is created to read:

624.351 Medicaid and Public Assistance Fraud Strike Force.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that there is a need to develop and implement a statewide strategy to coordinate state and local agencies, law enforcement entities, and investigative units in order to focus programs and initiatives dealing with the prevention, detection, and prosecution of Medicaid and public assistance fraud.

(2) ESTABLISHMENT.—The Medicaid and Public Assistance Fraud Strike Force is created within the department to oversee and coordinate state and local efforts to eliminate Medicaid and

597-02566-10

public assistance fraud and to recover state and federal funds.  
The strike force shall serve in an advisory capacity and provide  
recommendations and policy alternatives to the Chief Financial  
Officer.

(3) MEMBERSHIP.—The strike force shall consist of the  
following 11 members who may not designate anyone to serve in  
their place:

(a) The Chief Financial Officer, who shall serve as chair.

(b) The Attorney General, who shall serve as vice chair.

(c) The executive director of the Department of Law  
Enforcement.

(d) The Secretary of Health Care Administration.

(e) The Secretary of Children and Family Services.

(f) The State Surgeon General.

(g) Five members appointed by the Chief Financial Officer,  
consisting of two sheriffs, two chiefs of police, and one state  
attorney. When making these appointments, the Chief Financial  
Officer shall consider representation by geography, population,  
ethnicity, and other relevant factors in order to ensure that  
the membership of the strike force is representative of the  
state as a whole.

(4) TERMS OF MEMBERSHIP; COMPENSATION; STAFF.—

(a) All members appointed by the Chief Financial Officer  
shall be appointed for a term of 2 years. The remaining members  
are standing members of the strike force and may not serve  
beyond the time he or she ceases to hold the position that was  
the basis for appointment to the strike force. A vacancy shall  
be filled in the same manner as the original appointment but  
only for the unexpired term.

597-02566-10

144       (b) The Legislature finds that the strike force serves a  
145 legitimate state, county, and municipal purpose and that service  
146 on the strike force is consistent with a member's principal  
147 service in a public office or employment. Therefore membership  
148 on the strike force does not disqualify a member from holding  
149 any other public office or from being employed by a public  
150 entity, except that a member of the Legislature may not serve on  
151 the strike force.

152       (c) Members of the strike force shall serve without  
153 compensation, but are entitled to reimbursement for per diem and  
154 travel expenses pursuant to s. 112.061. Reimbursements may be  
155 paid from appropriations provided to the department by the  
156 Legislature for the purposes of this section.

157       (d) The Chief Financial Officer shall appoint a chief of  
158 staff for the strike force who must have experience, education,  
159 and expertise in the fields of law, prosecution, or fraud  
160 investigations and shall serve at the pleasure of the Chief  
161 Financial Officer. The department shall provide the strike force  
162 with staff necessary to assist the strike force in the  
163 performance of its duties.

164       (5) MEETINGS.—The strike force shall hold its  
165 organizational session by March 1, 2011. Thereafter, the strike  
166 force shall meet at least four times per year. Additional  
167 meetings may be held if the chair determines that extraordinary  
168 circumstances require an additional meeting. Members may appear  
169 by electronic means. A majority of the members of the strike  
170 force constitutes a quorum.

171       (6) STRIKE FORCE DUTIES.—The strike force shall provide  
172 advice and make recommendations, as necessary, to the Chief

597-02566-10

Financial Officer.

(a) The strike force may advise the Chief Financial Officer on the feasibility of undertaking initiatives that include, but are not limited to:

1. Conducting a census of local, state, and federal efforts to address Medicaid and public assistance fraud in this state, including fraud detection, prevention, and prosecution, in order to discern overlapping missions, maximize existing resources, and strengthen current programs.

2. Developing a strategic plan for coordinating and targeting state and local resources for preventing and prosecuting Medicaid and public assistance fraud. The plan must identify methods to enhance multiagency efforts that contribute to achieving the state's goal of eliminating Medicaid and public assistance fraud.

3. Identifying methods to implement innovative technology and data sharing in order to identify and analyze Medicaid and public assistance fraud with speed and efficiency.

4. Establishing a program that provides grants to state and local agencies that develop and implement effective Medicaid and public assistance fraud prevention and investigative programs, which are determined by the strike force to significantly contribute to achieving the state's goal of eliminating Medicaid and public assistance fraud. The grant program may also provide startup funding for new initiatives by local and state law enforcement or administrative agencies to combat Medicaid and public assistance fraud.

5. Developing and promoting crime prevention services and educational programs that serve the public, including, but not

597-02566-10

limited to, a well-publicized rewards program for the  
apprehension and conviction of criminals who perpetrate Medicaid  
and public assistance fraud.

6. Providing grants, contingent upon appropriation, for  
multiagency or state and local Medicaid and public assistance  
fraud efforts, which would include, but are not limited to:

a. Providing for a Medicaid and public assistance fraud  
prosecutor in the Office of the Statewide Prosecutor.

b. Providing assistance to state attorneys for support  
services or equipment, or for the hiring of assistant state  
attorneys, as needed, to prosecute Medicaid and public  
assistance fraud cases.

c. Providing assistance to judges for support services or  
for the hiring of senior judges, as needed, so that Medicaid and  
public assistance fraud cases can be heard expeditiously.

(b) The strike force shall receive periodic reports from  
relevant state agencies, law enforcement officers,  
investigators, prosecutors, and coordinating teams which relate  
to Medicaid and public assistance criminal and civil  
investigations. Such reports may include discussions regarding  
significant factors and trends relevant to a statewide Medicaid  
and public assistance fraud strategy.

(7) REPORTS.—The strike force shall annually prepare and  
submit a report on its activities and recommendations, by  
October 1, to the President of the Senate, the Speaker of the  
House of Representatives, the Governor, and the chairs of the  
Senate and House committees that have substantive jurisdiction  
over Medicaid and public assistance fraud.

Section 3. Section 624.352, Florida Statutes, is created to

597-02566-10

read:

624.352 Interagency agreements to detect and deter Medicaid and public assistance fraud.—

(1) The Chief Financial Officer shall prepare model interagency agreements for the prevention, investigation, and prosecution of Medicaid and public assistance fraud to be known as "Strike Force" agreements. Parties to such agreements may include any agency that is headed by a Cabinet officer, the Governor and Cabinet, a collegial body, or any federal, state, or local law enforcement agency.

(2) The agreements must include, but are not limited to:

(a) Establishing the agreement's purpose, mission, authority, organizational structure, procedures, supervision, operations, deputations, funding, expenditures, property and equipment, reports and records, assets and forfeitures, media policy, liability, and duration.

(b) Requiring that parties to an agreement have appropriate powers and authority relative to the purpose and mission of the agreement.

Section 4. Section 16.59, Florida Statutes, is amended to read:

16.59 Medicaid fraud control.—The Medicaid Fraud Control Unit ~~There is created in the Department of Legal Affairs to the Medicaid Fraud Control Unit, which may~~ investigate all violations of s. 409.920 and any criminal violations discovered during the course of those investigations. The Medicaid Fraud Control Unit may refer any criminal violation so uncovered to the appropriate prosecuting authority. The offices of the Medicaid Fraud Control Unit, ~~and the offices of the~~ Agency for

597-02566-10

Health Care Administration Medicaid program integrity program,  
and the Divisions of Insurance Fraud and Public Assistance Fraud  
within the Department of Financial Services shall, to the extent  
possible, be collocated; however, positions dedicated to  
Medicaid managed care fraud within the Medicaid Fraud Control  
Unit shall be collocated with the Division of Insurance Fraud.  
The Agency for Health Care Administration, and the Department of  
Legal Affairs, and the Divisions of Insurance Fraud and Public  
Assistance Fraud within the Department of Financial Services  
shall conduct joint training and other joint activities designed  
to increase communication and coordination in recovering  
overpayments.

Section 5. Paragraph (o) is added to subsection (2) of  
section 20.121, Florida Statutes, to read:

20.121 Department of Financial Services.—There is created a  
Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall  
consist of the following divisions:

(o) The Division of Public Assistance Fraud.

Section 6. Paragraph (b) of subsection (7) of section  
411.01, Florida Statutes, is amended to read:

411.01 School readiness programs; early learning  
coalitions.—

(7) PARENTAL CHOICE.—

(b) If it is determined that a provider has provided any  
cash to the beneficiary in return for receiving the purchase  
order, the early learning coalition or its fiscal agent shall  
refer the matter to the Department of Financial Services  
pursuant to s. 414.411 ~~Division of Public Assistance Fraud~~ for

597-02566-10

investigation.

Section 7. Subsection (2) of section 414.33, Florida Statutes, is amended to read:

414.33 Violations of food stamp program.—

(2) In addition, the department shall establish procedures for referring ~~to the Department of Law Enforcement~~ any case that involves a suspected violation of federal or state law or rules governing the administration of the food stamp program to the Department of Financial Services pursuant to s. 414.411.

Section 8. Subsection (9) of section 414.39, Florida Statutes, is amended to read:

414.39 Fraud.—

(9) All records relating to investigations of public assistance fraud in the custody of the department and the Agency for Health Care Administration are available for examination by the Department of Financial Services ~~Law Enforcement~~ pursuant to s. 414.411 ~~943.401~~ and are admissible into evidence in proceedings brought under this section as business records within the meaning of s. 90.803(6).

Section 9. Section 943.401, Florida Statutes, is transferred, renumbered as section 414.411, Florida Statutes, and amended to read:

414.411 ~~943.401~~ Public assistance fraud.—

(1)~~(a)~~ The Department of Financial Services ~~Law Enforcement~~ shall investigate all public assistance provided to residents of the state or provided to others by the state. In the course of such investigation the department ~~of Law Enforcement~~ shall examine all records, including electronic benefits transfer records and make inquiry of all persons who may have knowledge

597-02566-10

as to any irregularity incidental to the disbursement of public moneys, food stamps, or other items or benefits authorizations to recipients.

~~(b)~~ All public assistance recipients, as a condition precedent to qualification for public assistance ~~received and as defined under the provisions of~~ chapter 409, chapter 411, or this chapter ~~414~~, must ~~shall~~ first give in writing, to the Agency for Health Care Administration, the Department of Health, the Agency for Workforce Innovation, and the Department of Children and Family Services, as appropriate, and to the Department of Financial Services ~~Law Enforcement~~, consent to make inquiry of past or present employers and records, financial or otherwise.

(2) In the conduct of such investigation the Department of Financial Services ~~Law Enforcement~~ may employ persons having such qualifications as are useful in the performance of this duty.

(3) The results of such investigation shall be reported by the Department of Financial Services ~~Law Enforcement~~ to the appropriate legislative committees, the Agency for Health Care Administration, the Department of Health, the Agency for Workforce Innovation, and the Department of Children and Family Services, and to such others as the department ~~of Law Enforcement~~ may determine.

(4) The Department of Health and the Department of Children and Family Services shall report to the Department of Financial Services ~~Law Enforcement~~ the final disposition of all cases wherein action has been taken pursuant to s. 414.39, based upon information furnished by the Department of Financial Services

597-02566-10

347 ~~Law Enforcement.~~

348 (5) All lawful fees and expenses of officers and witnesses,  
349 expenses incident to taking testimony and transcripts of  
350 testimony and proceedings are a proper charge to the Department  
351 of Financial Services ~~Law Enforcement~~.

352 (6) The provisions of this section shall be liberally  
353 construed in order to carry out effectively the purposes of this  
354 section in the interest of protecting public moneys and other  
355 public property.

356 Section 10. Audit of the Medicaid fraud and abuse  
357 processes.—

358 (1) The Auditor General, in consultation with the Office of  
359 Program Policy Analysis and Government Accountability, shall  
360 conduct an operational audit of the Agency for Health Care  
361 Administration's Medicaid fraud and abuse systems, including the  
362 Medicaid program integrity program. The scope of the audit may  
363 include the Attorney General's Medicaid Fraud Control Unit, and  
364 the Medicaid-related programs in the Department of Health, the  
365 Department of Elderly Affairs, the Agency for Persons with  
366 Disabilities, and the Department of Children and Family  
367 Services. The audit must include, but is not limited to:

368 (a) An evaluation of current Medicaid policies and the  
369 Medicaid fiscal agent.

370 (b) A comprehensive analysis of all Medicaid fraud and  
371 abuse prevention and detection processes, including all agency  
372 contracts, Medicaid databases, and internal control risk  
373 assessments.

374 (c) A comprehensive evaluation of the effectiveness of the  
375 current laws, rules, and contractual requirements that govern

597-02566-10

Medicaid managed care entities.

(d) An evaluation of the agency's Medicaid managed care oversight processes.

(2) The audit report must include, but is not limited to:

(a) Recommendations for additional Medicaid fiscal agent edits to increase the overall efficiency of the Medicaid program, including reductions in Medicaid overpayments; and

(b) Operational and legislative recommendations to enhance the prevention and detection of fraud and abuse in the Medicaid program, including the Medicaid managed care program, and to manage the program in a more cost-effective manner.

(3) The Auditor General's Office and the Office of Program Policy Analysis and Government Accountability may contract with technical consultants to assist in the performance of the audit. The Auditor General shall submit the joint audit report to the President of the Senate, the Speaker of the House of Representatives, and the Governor by December 1, 2011.

Section 11. Medicaid claims adjudication project.—The Agency for Health Care Administration shall issue a competitive procurement pursuant to chapter 287, Florida Statutes, with a third-party vendor, at no cost to the state, to provide a real-time, front-end database to augment the Medicaid fiscal agent program edits and claims adjudication process. The vendor shall provide an interface with the Medicaid fiscal agent to decrease inaccurate payment to Medicaid providers and improve the overall efficiency of the Medicaid claims-processing system.

Section 12. All powers, duties, functions, records, offices, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and

597-02566-10

unexpended balances of appropriations, allocations, and other  
funds relating to public assistance fraud in the Department of  
Law Enforcement are transferred by a type two transfer, as  
defined in s. 20.06(2), Florida Statutes, to the Division of  
Public Assistance Fraud in the Department of Financial Services.

Section 13. This act shall take effect January 1, 2011.